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SERVICE DATE - AUGUST 13, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-603 (Sub-No. 1X)

V AND S RAILWAY, INC.—ABANDONMENT EXEMPTION—IN BARBER COUNTY, KS

Decided: August 7, 2003

By petition filed on May 2, 2003, V and S Railway, Inc. (VSR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 20-mile line of railroad extending from milepost 21, at Medicine Lodge, to the end of the line at milepost 41, at Sun City, in Barber County, KS (the line).¹ Notice of the petition was served and published in the Federal Register (68 FR 28046) on May 22, 2003. The petition for exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

The line is part of a 41-mile rail line that VSR acquired from the Central Kansas Railway, L.L.C., in 2000. According to VSR, only two shippers have used the line in recent years, and there has been no traffic since April 30, 2002. National Gypsum Company (NG) diverted all of its gypsum rock traffic to trucks on April 30, 2002.² Prior to that date, NG used the line for only about 10% of its gypsum rock traffic.³ Farmers Coop Equity Company (Farmers Coop) maintains grain elevators on the line in Medicine Lodge⁴ and Lake City, but it has not shipped any traffic over the line since at least December 2000. There is no overhead traffic, as the line has been stub-ended at Sun City since 1993, and VSR states that there is no reasonable prospect

¹ VSR indicates that it initially planned also to abandon the segment of its rail line between mileposts 20.66 and 21; however, it has decided to retain this track.

² Traffic data submitted by VSR shows that NG shipped an average of 635 carloads per year between 1998 and 2001.

³ VSR asserts that it actively solicited NG's traffic in an attempt to render operations on the line profitable; however, NG entered into a contract with a trucking company to haul 100% of its gypsum rock traffic and does not plan to use the line in the future. NG also ships plaster board by rail over a portion of VSR's line not subject to abandonment here.

⁴ Rail service to Medicine Lodge will not be affected by this abandonment exemption.

that traffic will return to the line in the foreseeable future. Petitioner points out that alternative motor carrier and rail transportation service is available.⁵

VSR indicates that operations on the line have been unprofitable since its acquisition. VSR estimates that it would incur an avoidable loss of \$82,043 as a result of resuming operations on the line.⁶ This figure does not include a one-time cost of rebuilding a washed-out bridge on the line, which, according to VSR, increases its losses significantly.⁷

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving VSR of the expense of owning and maintaining a line that is no longer used and by allowing VSR to use its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because there are no active shippers on the line. Moreover, alternative rail and motor carrier service is available, and no shipper has objected to the proposed abandonment.

⁵ VSR notes that alternative service is available to shippers over a local highway network; U.S. Highway 281 runs through Medicine Lodge, where it connects with U.S. Highway 160, and U.S. Highways 183 and 54 are nearby. In addition, the Union Pacific Railroad Company and The Burlington Northern and Santa Fe Railway Company provide service over nearby rail lines.

⁶ Because there has been no traffic on the line for one year, VSR's forecast assumes historic traffic and service levels and gross revenues per car received since December 2000. It uses a combination of actual and estimated costs incurred in operating the line at historic traffic levels.

⁷ VSR submits that its maintenance-of-way costs are conservative, given the years of deferred maintenance and the line's 35 bridges, several of which are in need of rehabilitation.

Nevertheless, to ensure that the two potential shippers are informed of this action, the Board will require VSR to serve a copy of this decision on NG and Farmers Coop within 5 days after the service date and certify to the Board that it has done so. Given the market power finding, the Board need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

VSR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an Environmental Assessment (EA) on July 1, 2003, and requested comments. No comments were filed by the July 30, 2003 due date. Based on SEA's recommendation, the Board concludes that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be suitable for other public uses following abandonment. However, no one has sought a public use condition, and no such condition will be imposed.⁸

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment by VSR of the above-described line is granted, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. VSR is directed to serve a copy of this decision on NG and Farmers Coop within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by August 22, 2003, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR

⁸ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by June 11, 2003.

1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective September 12, 2003. Petitions to stay must be filed by August 28, 2003, and petitions to reopen must be filed by September 8, 2003.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), VSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by VSR’s filing of a notice of consummation by August 13, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary